

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

SAVOR SEASONINGS, LLC
4292 Armstrong Blvd.
Batavia, Ohio 45103

Plaintiff,

-vs-

PS SEASONING & SPICES, INC.
216 W. Pleasant Street
Iron Ridge, WI 53035

Defendant.

Case No. 1:16-cv-1145

(JUDGE _____)

**COMPLAINT OF PLAINTIFF
SAVOR SEASONINGS LLC**

JURY TRIAL DEMANDED

Plaintiff Savor Seasonings LLC (“Savor” or “Plaintiff”), for its Complaint against Defendant PS Seasoning & Spices, Inc. (“Defendant”), hereby states as follows:

PARTIES

1. Savor is an Ohio limited liability company with its principal place of business located at 4292 Armstrong Blvd., Batavia, Ohio 45103.
2. Upon information and belief, Defendant is a Wisconsin corporation with its principal place of business located at 216 W Pleasant St., Iron Ridge, WI 53035.

NATURE OF THE ACTION

3. This is an action for unfair competition under the Trademark Act of 1946 (the “Lanham Act”), as amended, 15 U.S.C. § 1125(a); deceptive trade practices under Ohio Revised Code § 4165.01 et seq.; trademark infringement under the common law of the State of Ohio; and unfair competition under the common law of the State of Ohio.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this litigation because this action arises under 15 U.S.C. §§ 1051-1141 of the Lanham Act, and jurisdiction is proper in accordance with 15 U.S.C. § 1121 and 28 U.S.C. §§ 1338(a) and (b). Additionally, this Court has pendant, ancillary and/or supplemental jurisdiction over the state law claims asserted in this litigation pursuant to 28 U.S.C. § 1337.

5. Furthermore, this Court has personal jurisdiction over this matter because Savor's principal place of business is located in Clermont County, Ohio, upon information and belief Defendant's products can be and have been sold into Ohio, and the effects of Defendant's unlawful conduct are felt primarily in Clermont County, Ohio.

6. Furthermore, venue is appropriate in this Court in accordance with 28 U.S.C. § 1331(b) and (c) as a result of Savor maintaining its principal place of business in Clermont County, Ohio, and because the effects of Defendant's unlawful conduct are felt in Clermont County, Ohio.

FACTS COMMON TO ALL CAUSES OF ACTION

7. Since at least December 2002 and continuing to the present, Savor has used its widely recognized SAVOR trademark in connection with the development, manufacturing and sale of a wide variety of seasoning and flavoring products, and over nearly fifteen years, has become the premier provider of seasonings for snack foods and supply seasonings for seafood, meats, and bakeries.

8. Savor manufactures millions of pounds of seasoning annually which are enjoyed by Americans all across the nation under the SAVOR trademark.

9. Savor has continuously used its well-known SAVOR trademark in connection with its goods throughout the United States for over a decade, and enjoys

significant goodwill in that mark through its use and substantial marketing and advertising efforts.

10. Savor is also the owner of Appl. Serial No.: 87195278 for the SAVOR SEASONINGS, LLC SATISFYING YOUR SENSES & Design mark filed October 6, 2016. A true and accurate copy of the TARR Status Page for the SAVOR SEASONINGS application is attached hereto as **Exhibit A** (the trademark application and all common law rights discussed herein are hereinafter collectively referred to as the “SAVOR Marks”).

11. The SAVOR Marks have been continuously and exclusively used by Savor since 2002 and are enforceable. Savor currently possesses all rights and interest in the SAVOR Marks.

12. Upon information and belief, Defendant is also engaged in the business of developing, manufacturing and selling seasoning under the trademark SAVOR in direct competition with Savor. True and accurate screenshots from Defendant’s www.psseasoning.com website showing seasonings sold with the SAVOR trademark are attached hereto as **Exhibits B-D** and are incorporated by reference as if fully restated herein.

13. Upon information and belief, Defendant has also used Plaintiff’s SAVOR Marks as a keyword for search engine optimization and for search engine advertising to deceive the public into travelling to the Defendant’s site and thereafter purchasing Defendant’s seasoning goods bearing the SAVOR trademark.

14. Upon information and belief, Defendant’s acts of infringement and unfair competition have been committed with the intent to cause confusion and mistake and to deceive.

15. Savor has not consented to Defendant's manufacture, sale, and/or distribution of seasoning products that use the SAVOR Marks.

COUNT I
FEDERAL UNFAIR COMPETITION
VIOLATION OF SECTION 43(a) OF THE LANHAM ACT

17. Plaintiff hereby incorporates by reference the preceding paragraphs as if fully restated herein.

18. As a result of Plaintiff's longstanding use, substantial sales, significant advertising and promotional activities, and widespread distribution of such efforts throughout Ohio and elsewhere, Plaintiff's SAVOR Marks have become well known and accepted by the public and serves to distinguish Plaintiff's goods from those of others.

19. Defendant's use of the SAVOR Marks in commerce in connection with the development, manufacturing and sale of seasoning and flavoring products constitutes a false designation of origin and a false or misleading description or representation of fact which is likely to cause confusion, mistake or deception as to the affiliation, connection, or association of Defendant with Plaintiff and as to the origin, sponsorship or approval of Defendant's goods by Plaintiff, all within the meaning of § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

20. Upon information and belief, Defendant has committed the foregoing acts with notice of Plaintiff's rights and such actions were willful and intended to cause confusion, to cause mistake, or to deceive.

21. Plaintiff has been and will continue to be damaged by Defendant's unlawful actions.

22. Defendant's conduct and acts, as alleged above, will continue to cause irreparable harm to Plaintiff as to which it has no adequate remedy at law, unless enjoined by this Court.

COUNT II
OHIO UNIFORM DECEPTIVE TRADE PRACTICES ACT

23. Plaintiff hereby incorporates by reference the preceding paragraphs as if fully restated herein.

24. Defendant has willfully violated the Ohio Uniform Deceptive Trade Practices Act, Ohio Revised Code §4165.02, by causing likelihood of confusion or misunderstanding as to the source, sponsorship, approval, affiliation, connection or association with Plaintiff.

25. Upon information and belief, Defendant's acts of infringement have been committed with the intent to cause confusion and mistake and to deceive.

26. Plaintiff has been and will continue to be damaged by Defendant's unlawful actions.

27. Defendant's conduct and acts, as alleged above, will continue to cause irreparable harm to Plaintiff as to which it has no adequate remedy at law, unless enjoined by this Court.

COUNT III
COMMON LAW TRADEMARK INFRINGEMENT

28. Plaintiff hereby incorporates by reference the preceding paragraphs as if fully restated herein.

29. Defendant's use of the SAVOR Marks as described herein constitutes trademark infringement under the common law of the State of Ohio.

30. Upon information and belief, Defendant's acts of infringement are willful and have been committed with the intent to cause confusion and mistake and to deceive.

31. Plaintiff has been and will continue to be damaged by Defendant's infringement.

32. Defendant's conduct and acts, as alleged above, will continue to cause irreparable harm to Plaintiff as to which it has no adequate remedy at law, unless enjoined by this Court.

COUNT IV
COMMON LAW UNFAIR COMPETITION

33. Plaintiff hereby incorporates by reference the preceding paragraphs as if fully restated herein.

34. The acts described above reflect Defendant's scheme by which it, without authority, consent or privilege, intended to imitate or pass off its goods as those of Plaintiff or as goods that have received the sponsorship or approval of Plaintiff. Such conduct constitutes unfair competition in violation of the common law of the State of Ohio.

35. Upon information and belief, Defendant's alleged acts of infringement are willful and have been committed with the intent to cause confusion and mistake and to deceive.

36. Plaintiff has been and will continue to be damaged by Defendant's unfair competition.

37. Defendant's conduct and acts, as alleged above, will continue to cause irreparable harm to Plaintiff as to which it has no adequate remedy at law, unless enjoined by this Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Savor Seasonings LLC respectfully demands judgment against Defendant PS Seasoning & Spices, Inc. as follows:

A. Defendant PS Seasoning and Spices Inc., as well as its partners, officers, agents, servants, employees and attorneys, successors and assigns, and all others in active concert or participation with them be enjoined and restrained during the pendency of this action, and permanently thereafter, from manufacturing, dealing in, marketing, sales, advertising or distribution in the United States of seasoning and flavoring products under the SAVOR Marks or any confusingly similar variations thereof.

B. Defendant, and all others holding by, through, or under it, be required, jointly and severally, to:

(1) account for and pay to Savor all profits derived from its acts of unfair competition in accordance with 15 U.S.C. § 1117(a) and the laws of Ohio, and that these profits be trebled in accordance with 15 U.S.C. § 1117(a);

(2) pay to Savor the amount of all damages incurred by Savor by reason of Defendant's acts of unfair competition trebled in accordance with 15 U.S.C. § 1117(a);

(3) pay to Savor compensatory damages in an amount to be determined at trial;

(4) pay to Savor punitive damages in an amount to be determined at trial;

- (5) pay to Savor the costs of this action, together with reasonable attorneys' fees and disbursements, in accordance with 15 U.S.C. § 1117(a);
- (6) file with the Court and serve on Savor an affidavit setting forth in detail the manner and form in which Defendant has complied with the terms of this injunction, in accordance with 15 U.S.C. § 1116.

C. Savor have any such other relief that this Court deems just or appropriate.

Respectfully submitted,

/s/ Michael J. Wheeler
April L. Besl, Esq. (0082542)
Michael J. Wheeler, Esq. (0095319)
DINSMORE & SHOHL, LLP
255 E. Fifth Street, Suite 1900
Cincinnati, OH 45202
Phone: (513) 977-8200
Fax: (513) 977-8141
april.besl@dinsmore.com
michael.wheeler@dinsmore.com
Counsel for Plaintiff
Savor Seasonings LLC

JURY TRIAL DEMANDED

Pursuant to Fed. R. Civ. P. 38(b), Plaintiff hereby demand a trial by jury.

Respectfully submitted,

/s/ Michael J. Wheeler
April L. Besl, Esq. (0082542)
Michael J. Wheeler, Esq. (0095319)
DINSMORE & SHOHL, LLP
255 E. Fifth Street, Suite 1900
Cincinnati, OH 45202
Phone: (513) 977-8200
Fax: (513) 977-8141
april.besl@dinsmore.com
michael.wheeler@dinsmore.com
Counsel for Plaintiff
Savor Seasonings LLC